

14 days to arrange for preliminary matters, such as the date and place of hearing. Should an arbitrator be notified directly by the parties that he or she has been selected, the Arbitrator must promptly notify the OAS of the selection and his or her willingness to serve. If the parties settle a case prior to the hearing, the parties must inform the arbitrator as well as the OAS. Consistent failure to follow these procedures may lead to a denial of future OAS service.

(b) If the parties request a list of names and biographical sketches rather than a panel, they may choose to appoint and contact an arbitrator directly. In this situation, neither the parties nor the arbitrator is required to furnish any additional information to FMCS and no case number will be assigned.

(c) Where the parties' collective bargaining agreement is silent on the manner of selecting arbitrators, the parties may wish to consider any jointly determined method or one of the following methods for selection of an arbitrator from a panel:

(1) Each party alternately strikes a name from the submitted panel until one remains, or

(2) Each party advises the OAS of its order of preference by numbering each name on the panel and submitting the numbered lists in writing to the OAS. The name that has the lowest combined number will be appointed.

(3) In those situations where the parties separately notify the OAS of their preferred selections, once the OAS receives the preferred selection from one party, it will notify the other party that it has fourteen (14) days in which to submit its selections. If that party fails to respond within the deadline, the first party's choice will be honored. If, within 14 days, a second panel is requested and is allowed by the collective bargaining agreement, the requesting party must pay a fee for the second panel.

(d) The OAS will make a direct appointment of an arbitrator only upon joint request unless authorized by the applicable collective bargaining agreement.

(e) The issuance of a panel of names or a direct appointment in no way sig-

nifies a determination on arbitrability or an interpretation of the terms and conditions of the collective bargaining agreement. The resolution of such disputes rests solely with the parties.

#### **§ 1404.13 Conduct of hearings.**

All proceedings conducted by the arbitrators shall be in conformity with the contractual obligations of the parties. The arbitrator shall comply with § 1404.4(b). The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, and the arbitrator's decision shall be based upon the evidence and testimony presented at the hearing or otherwise incorporated in the record of the proceeding. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. An award rendered in an *ex parte* proceeding of this nature must be based upon evidence presented to the arbitrator.

#### **§ 1404.14 Decision and award.**

(a) Arbitrators shall make awards no later than 60 days from the date of the closing of the record as determined by the arbitrator, unless otherwise agreed upon by the parties or specified by the collective bargaining agreement or law. However, failure to meet the 60 day deadline will not invalidate the process or award. A failure to render timely awards reflects upon the performance of an arbitrator and may lead to removal from the FMCS Roster.

(b) The parties should inform the OAS whenever a decision is unduly delayed. The arbitrator shall notify the OAS if and when the arbitrator:

(1) Cannot schedule, hear, and render decisions promptly, or

(2) Learns a dispute has been settled by the parties prior to the decision.

(c) Within 15 days after an award has been submitted to the parties, the arbitrator shall submit an Arbitrator's Report and Fee Statement (Form R-19) to OAS showing a breakdown of the fee and expense charges so that the OAS may review conformance with stated charges under § 1404.11(a). The Form R-19 is not to be used to invoice the parties.

## § 1404.15

(d) While FMCS encourages the publication of arbitration awards, arbitrators should not publicize awards if objected to by one of the parties.

### **§ 1404.15 Fees and charges of arbitrators.**

(a) FMCS will charge all arbitrators an annual fee to be listed on the Roster. All arbitrators listed on the Roster may charge a per diem and other predetermined fees for services, if the amount of such fees have been provided in advance to FMCS. Each arbitrator's maximum per diem and other fees are set forth on a biographical sketch which is sent to the parties when panels are submitted. The arbitrators shall not change any fee or add charges without giving at least 30 days advance written notice to FMCS. Arbitrators with dual business addresses must bill the parties for expenses from the least expensive business address to the hearing site.

(b) In cases involving unusual amounts of time and expenses relative to the pre-hearing and post-hearing administration of a particular case, an administrative charge may be made by the arbitrator.

(c) Arbitrators shall divulge all charges to the parties and obtain agreement thereto immediately after appointment.

(d) The OAS requests that it be notified of any arbitrator's deviation from the policies expressed in this part. While the OAS does not resolve individual fee disputes, repeated complaints concerning the fees charged by an arbitrator will be brought to the attention of the Arbitrator Review Board for consideration. Similarly, repeated complaints by arbitrators concerning non-payment of fees by the parties may lead to the denial of services or other actions by the OAS.

### **§ 1404.16 Reports and biographical sketches.**

(a) Arbitrators listed on the Roster shall execute and return all documents, forms and reports required by the OAS. They shall also keep the OAS informed of changes of address, telephone number, availability, and of any business or other connection or relationship which involves labor-management relations

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or which creates or gives the appearance of advocacy as defined in § 1404.5(c)(1).

(b) The OAS will provide biographical sketches on each person admitted to the Roster from information supplied by applicants. Arbitrators may request revision of biographical information at later dates to reflect changes in fees, the existence of additional charges, or other relevant data. The OAS reserves the right to decide and approve the format and content of biographical sketches.

### **APPENDIX TO 29 CFR PART 1404 ARBITRATION POLICY; SCHEDULE OF FEES**

Annual listing fee for all arbitrators: \$100 for the first address; \$50 for second address

Request for panel of arbitrators: \$30 for each panel request (includes subsequent appointment)

Direct appointment of arbitrator when a panel is not used—\$20 per appointment

List and biographic sketches of arbitrators in a specific area—\$10 per request plus \$.10 per page

EFFECTIVE DATE NOTE: At 62 FR 34171, June 25, 1997, part 1404 was revised, effective Oct. 1, 1997, except § 1404.7, which will be effective Sept. 1, 1997. For the convenience of the user, the text remaining in effect until Oct. 1, 1997, is set forth as follows:

### **PART 1404—ARBITRATION SERVICES**

#### **Subpart A—Arbitration Policy; Administration of Roster**

Sec.

1404.1 Scope and authority.

1404.2 Policy.

1404.3 Administrative responsibilities.

#### **Subpart B—Roster of Arbitrators; Admission and Retention**

1404.4 Roster and status of members.

1404.5 Listing on the Roster; criteria for listing and retention.

1404.6 Freedom of choice.

#### **Subpart C—Procedures for Arbitration Services**

1404.10 Procedures for requesting arbitration panels.

1404.11 Arbitrability.

1404.12 Nominations of arbitrators.

1404.13 Selection and appointment of arbitrators.

1404.14 Conduct of hearings.